IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.3084 of 2006 (O&M)

Date of Decision:19.2.2007.

Siri Bhagwan

....Appellant.

Versus

Smt. Phoolwati and others.

...Respondents.

CORAM : Hon'ble Mr. Justice Hemant Gupta.

Present:- Mr.R.K.Jain,Advocate
for the Appellant.

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HEMANT GUPTA, J.(ORAL)

C.M. No.7381C of 2006

For the reasons mentioned in the application, delay of 31 days in filing the appeal is condoned subject to all just exceptions.

C.M. No.7380C of 2006

For the reasons mentioned in the application, delay of 68 days in refiling the appeal is condoned.

R.S.A. No.3084 of 2006

The defendant is in the regular second appeal aggrieved against the judgment and decree passed by the Courts below whereby the suit for declaration that the plaintiff is the dholidhar in respect of the land measuring 9 kanals 4 marlas was decreed.

It is the stand of the defendant that by virtue of a writing dated 27.5.1963 Shanti Devi-plaintiff received Rs.2200/- and transferred

dholidhar rights in presence of Biswedars in favour of defendants and thus, the plaintiffs cannot claim to be dholidhar. The writing dated 27.5.1963 was produced in evidence as Ex.D1. The learned trial Court dismissed the suit holding that the possession of the defendant-appellant is that of a tenant. Aggrieved against the said judgment and decree, the plaintiff filed an appeal in which the defendant-appellant filed cross-objections. The learned First Appellate Court has accepted the appeal reversing the findings and decreed the suit. Now, the defendants has come up in second appeal.

The learned First Appellate Court has found that the plaintiff is dholidhar on the basis of jamabandi for the year 1971-72, Ex.D3. It was found that no rent is being paid as the same is being used for religious purpose. While considering the writing dated 27.5.1963, the first Appellate Court found that such writing cannot be considered as a valid document for transfer of right of dholidhar and that such rights cannot legally and techanically be sold or transferred in favour of any other person. Consequently the findings recorded by the learned trial Court was reversed.

Learned counsel for the appellant has vehemently argued that the appellant has reflected as gair-marusi on payment of 1/3rd batai and therefore the finding recorded by the learned First Appellant court, cannot be sustained in law. However, I am unable to agree with the said argument raised by learned counsel for the appellant. The entire case of the appellant is based upon the writing dated 27.5.1963 Ex.D1. The said writing is a writing of transfer of the rights of the land by the plaintiff on payment of Rs.2200/- It is well settled that any transfer of right or interest

in the immovable property can be effected only by a registered document. Since the transfer of right sought in favour of the defendant-appellant is sought to be proved by virtue of a document, which is not registered, the suit has been rightly decreed. It may be noticed that dholidhar rights cannot be alienated as they are personal in nature.

In view thereof I do not find any illegality or irregularity, which may give rise to any substantial question of law in this regular second appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

19.2.2007.
Reema